

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP/(954) 797-1101

**SUBJECT:** Resolution - Developers Agreement

Project Name and Location: Pointe West Center North Plat, 3450-3550  
Weston Road, generally located at the northwest corner of Interstate 75  
and SW 36 Street.

## **TITLE OF AGENDA ITEM:**

DA 3-1-01 Pointe West Center North Plat

**REPORT IN BRIEF:** On January 5, 2000, Town Council passed resolution No. R 2000-005, approving a boundary plat consisting of 9.994 acres for 55,000 square feet of commercial use to accommodate a car dealership. In order to satisfy roadway concurrency, the developer is entering into a development agreement requiring contribution towards roadway improvement projects. The Town is party to this Developers Agreement solely for the purpose of issuing a certificate of occupancy. The agreement states that the Town shall not issue a certificate of occupancy on the Pointe West Center North Plat until the plat is approved and recorded and the improvements specified in the agreement to satisfy Broward County road concurrency requirements are constructed in accordance with the agreement.

**PREVIOUS ACTIONS:** Council approved three (3) previous versions of this agreement in January and August 2000, and March 2001, due to changes in Broward County's traffic concurrency mitigation requirements for this project.

**CONCURRENCES:** None

**RECOMMENDATION(S):** Motion to approve.

**Attachment(s):** Justification letter, Land Use Map, Subject Site Map, Aerial.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, BROWARD COUNTY, AND JOHN L. LOWELL, JR., TRUSTEE PROVIDING FOR REMEDIAL MEASURES TO SATISFY ROAD CONCURRENCY REQUIREMENTS RELATED TO THE POINTE WEST CENTER NORTH PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, John L. Lowell, Jr., Trustee is proposing to develop properties known as the Pointe West Center North Plat; and

WHEREAS, Broward County will allow remedial measures to satisfy road concurrency requirements for compact deferral areas should an agreement be entered into with the Town as a party.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between Broward County, John L. Lowell, Jr., Trustee, and the Town of Davie, whereby the Town of Davie Development Services Department shall not issue any certificates of occupancy until the Pointe West Center North Plat is approved and recorded and the Improvement is constructed in accordance with the Agreement.

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

**RUDEN  
MCDLOSKY  
SMITH  
SCHUSTER &  
RUSSELL, P.A.  
ATTORNEYS AT LAW**

200 EAST RIVINGTON BOULEVARD  
FORT LAUDERDALE, FLORIDA 33301

POST OFFICE BOX 1900  
FORT LAUDERDALE, FLORIDA 33302

TELEPHONE (754) 764-6660  
FAX (754) 333-6776

ARTIST'S DIRECT LOCAL NUMBER (754) 527-2476  
E-MAIL: RUDEN@RUDEN.COM

March 1, 2001

**VIA HAND DELIVERY**

Mr. Jeff Katims  
Community Development Services  
Town of Davie  
6591 S.W. 45th Street  
Davie, FL 33314

RE: Traffic Concurrency Agreement Among Broward County ("County"), Town of Davie ("Town") and John L. Lowell, Jr., Trustee for Road Concurrency Relating to the Pointe West Center North Plat ("Plat") ("Agreement")

Dear Jeff:

We previously filed with the Town, at least two other versions of the enclosed Agreement, however, the status of the Regional Road Network has changed since our last submittal which requires us to submit yet another version of the above-referenced Agreement.

Development of the Plat generated TRIPS on four over-capacity segments. Two of those segments, Arvida Parkway and Weston Road, have been re-classified allowing a higher volume of traffic on both rights-of-way. As such, Arvida and Weston Road are no longer over-capacity. Arvida is obligated to do road work on Griffin Road which will sufficiently mitigate the Griffin Road problem.

The remaining over-capacity segment (South Post Road from Enterprise Avenue to Weston Road) will be the only over-capacity segment requiring mitigation. Our client is proposing to construct the Improvement described in Exhibit "B" ("Improvement") to mitigate the Plat's traffic impacts. The Broward County Department of Planning and Environmental Protection is supportive of the Improvement as mitigation.

If you have any questions or need additional information, please do not hesitate to call.

Sincerely yours,

RUDEN, MCDLOSKY, SMITH,  
SCHUSTER & RUSSELL, P.A.

Bonnie E. Miskel

BLM:ghk  
Enclosure  
cc: Jack Lowell

**Return recorded document to:**  
Broward County Dev. Management Division  
115 South Andrews Avenue, Room #A-240  
Fort Lauderdale, Florida 33301

**Document prepared by:**  
Bonnie L. Miskel, Esq.  
Ruden, McClosky, et al.  
200 E. Broward Boulevard, P.O. Box 1900  
Fort Lauderdale, FL 33301

**TRAFFIC CONCURRENCY AGREEMENT  
AMONG  
BROWARD COUNTY, AND  
THE TOWN OF DAVIE, AND  
JOHN LOWELL, JR., Trustee,  
FOR ROAD CONCURRENCY RELATING TO  
THE POINTE WEST CENTER NORTH PLAT**

THIS AGREEMENT, is made and entered into by and among:

BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY" through its Board of County Commissioners;

and

The TOWN OF DAVIE, a Florida municipal corporation created and existing under the laws of the State of Florida, hereinafter referred to as "TOWN,"

and

JACK LOWELL, JR., Trustee, his successors and assigns, hereinafter referred to collectively as "DEVELOPER."

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Section 5-182 of said Chapter 5 more specifically requires that an application

CAF#268

County Project

for a development permit satisfy concurrency requirements for compact deferral areas; and

WHEREAS, DEVELOPER, as owner, has applied for approval of the Pointe West Center North Plat (100-MP-99) more particularly described in Exhibit "A" attached hereto and made a part hereof ("Plat"); and

WHEREAS, on May 11, 2000, the Broward County Development Management Division issued a Notification of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network, finding that the application for approval of the Plat does not satisfy the compact deferral area concurrency standards for the regional road network as stated in Section 5-182 of the Broward County Land Development Code ("CODE") for Griffin Road from I-75 to S.W. 160<sup>th</sup> Avenue, Arvida Parkway from I-75 to Weston Road, Weston Road from Arvida Parkway to South Post Road and South Post Road from Enterprise Avenue to Weston Road, and

WHEREAS, the County has approved a charge to the capacity of Weston Road such that Weston Road is no longer over-capacity; and

WHEREAS, by execution of this Agreement, the DEVELOPER hereby agrees to construct the Improvements described in Exhibit "B" attached hereto and incorporated herein ("Improvements") in accordance with this Agreement; and

WHEREAS, DEVELOPER has conducted a study and has determined that construction of the Improvements will mitigate the Plat's remaining traffic impacts so that the Plat will satisfy Broward COUNTY concurrency standards; and

WHEREAS, the Broward County Development Management Division has approved these remedial measures and finds that its concurrency requirements for the Plat will be met with the execution of, and compliance with, the terms of this Agreement by DEVELOPER,

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

1. The above recitals are true and correct and are hereby incorporated herein.
2. Construction of Improvements.
  - (a) DEVELOPER agrees to construct and/or perform the Improvements described in Exhibit "B" attached hereto. DEVELOPER agrees to complete the Improvements prior to receipt of the first certificate of occupancy for property within the Plat.
  - (b) If the Improvements described in Exhibit "B" are on a state road, as that term is defined in Subsection 334, Florida Statutes, DEVELOPER agrees that prior to recordation of the Plat, DEVELOPER shall provide COUNTY with proof of having received a permit or a letter of intent to permit from the State of Florida, Department of Transportation, for the Improvements.

- (c) DEVELOPER shall provide to COUNTY contemporaneously with this Agreement, a lien, a Letter of Credit or Surety Bond, in the amount of \$ \_\_\_\_\_, in a form acceptable to COUNTY, which amount represents One Hundred Twenty-Five (125%) Percent of the estimated cost of the Improvements.
- (d) The Improvements described in Exhibit "B" shall be installed in accordance with applicable COUNTY, State of Florida, Department of Transportation standards and specifications in accordance with the Development Review Report for the Plat. The construction plans for the Improvements, including pavement marking and signing plans, shall be submitted to COUNTY for review and approval prior to commencement of construction. Construction shall be subject to inspection and approval by COUNTY. Pavement marking and signing shall be provided for the Improvements, and shall be subject to review, field inspections and final approval by the Broward County Traffic Engineering Division, which Improvements shall be consistent with the previously approved plans.
- (e) DEVELOPER agrees that any contract(s) for the Improvements shall include the following:
  - (i) Indemnify and save harmless the COUNTY, the Board of County Commissioners of Broward County, and the State of Florida, its agents and employees, from or on account of any injuries or damages received or sustained by any person or persons during or on account of any operations connected with the construction of the Improvements; or by or in consequence of any negligence in connection with the same; or by use of any improper materials or by or on account of an act or omission of the said contractor, subcontractor, agents, servants or employees.
  - (ii) Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws.
  - (iii) Employers' Liability with a limit of One Hundred Thousand Dollars (\$100,000.00) per accident.
  - (iv) Comprehensive General Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services' Office, and must include:

Premises and/or Operations.

Independent Contractors.

Products and/or completed operations.

Underground Coverages.

COUNTY and the Broward County Board of County Commissioners are to be named as additional insureds with respect to liability arising out of operations performed for COUNTY by or on behalf of CONTRACTOR or negligent acts or omissions of COUNTY in connection with general supervision of such operation.

(vi) Business Automobile Liability Insurance with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include owned vehicles and hired and non-owned vehicles.

Notice of Cancellation and/or Restriction: The policy(ies) must be endorsed to provide COUNTY with thirty (30) days notice of cancellation and/or restriction.

3. CONCURRENCY COMPLIANCE. COUNTY finds that by executing and complying with the terms of this Agreement, DEVELOPER has satisfied the adequacy of the Regional Roadway Network requirement of Section 5-182 of the Broward County Land Development Code for the PLAT as approved by the COUNTY.
4. TOWN is a party to the Agreement solely for the purpose of issuance of a Certificate of Occupancy which shall not be issued for any development within the Plat until the Plat is approved and recorded and the Improvement are constructed in accordance with this Agreement.
5. This Agreement shall be recorded in the Public Records of Broward County and shall be binding upon successors and assigns.
6. APPLICABLE LAW AND VENUE. The Parties agree that this Agreement shall be construed in accordance with the laws of the state of Florida. Venue for any action arising from this Agreement shall lie in Broward County, Florida.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

CAF#268

County Project

10/7/98



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 2001, CITY OF WESTON, signing by and through its Mayor, duly authorized to execute same, TOWN OF DAVIE, signing by and through its Mayor, duly authorized to execute same, and DEVELOPER, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its  
BOARD OF COUNTY

COMMISSIONERS

\_\_\_\_\_  
County Administrator and  
Ex-Officio Clerk of the  
Board of County Commissioners  
Chair  
of Broward County, Florida

By \_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

(date)

Approved as to form by  
Office of County Attorney  
Broward County, Florida  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-6968

By \_\_\_\_\_  
Assistant County Attorney

CAF4268

County Project

10/7/98

TRAFFIC CONCURRENCY AGREEMENT AMONG BROWARD COUNTY, THE CITY OF  
WESTON AND THE TOWN OF DAVIE FOR ROAD CONCURRENCY RELATING TO  
THE POINTE WEST CENTER PLAT

TOWN

TOWN OF DAVIE

\_\_\_\_\_  
Witness Signature

Mayor

\_\_\_\_ day of \_\_\_\_\_, 2000

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness Signature

Printed Name

ATTEST:

City Clerk

\_\_\_\_ day of \_\_\_\_\_, 2000

CORPORATE SEAL

APPROVED AS TO FORM:

By \_\_\_\_\_  
Town Attorney

STATE OF FLORIDA            )  
  )    SS  
COUNTY OF BROWARD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_ who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
My commission expires:

\_\_\_\_\_  
NOTARY PUBLIC

CAF#268

County Project

Commission No. \_\_\_\_\_

Type or print name

CAI#268

County Project

10/7/98

DEVELOPER

Witnesses:

Printed Name: \_\_\_\_\_

Print name: JOHN LOWELL, JR.,  
Trustee

Printed Name: \_\_\_\_\_

Title:

Address: \_\_\_\_\_

(CORPORATE SEAL)

\_\_\_\_\_ day of \_\_\_\_\_, 2000

STATE OF )  
 ) SS  
COUNTY OF DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by JOHN LOWELL, JR., Trustee, who is personally known to me or who has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC:

(Seal)

Print name: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

My commission expires:

---

EXHIBIT "A"

LEGAL DESCRIPTION

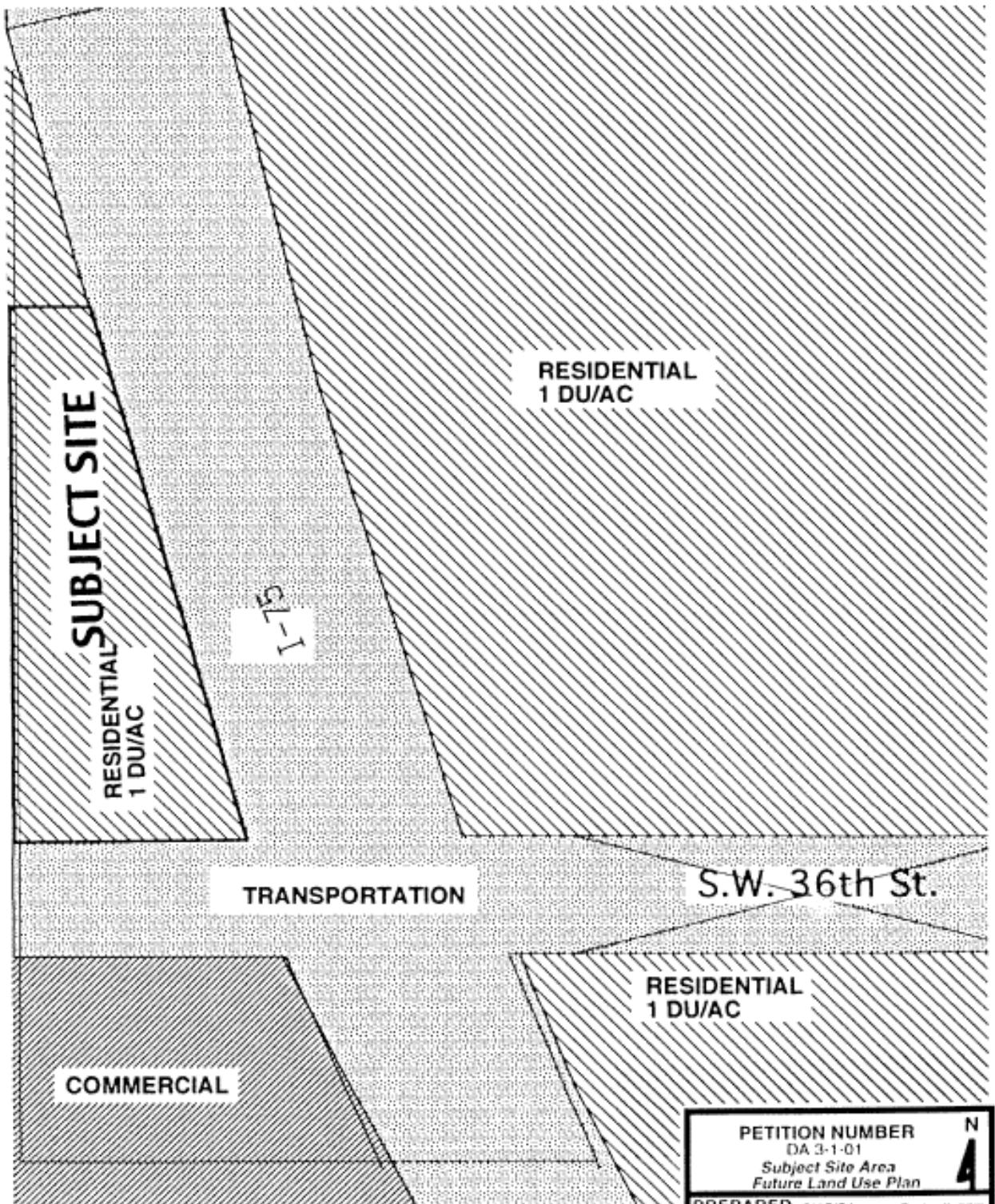
CAF#268

County Project

10/7/98

**EXHIBIT "B"**

- (a) Improve the Eastbound left turn-lane on South Post Road at Weston Road by lengthening the storage from 200 feet to 375 feet.
- (b) Expand the Southbound on ramp at I-75 and Arvida Parkway to permit two (2) lanes for approximately 500 feet with 600 feet of taper, or as permitted by FDOT.



PETITION NUMBER		N <b>4</b>
DA 3-1-01		
Subject Site Area Future Land Use Plan		
PREPARED 3/12/01	Scale 1"=300'	
BY THE PLANNING & ZONING DIVISION		

